

**NEXTEL**

**Nextel Communications, Inc.**

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July 16, 1997

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

EX PARTE

Re: WT Docket No. 97-82

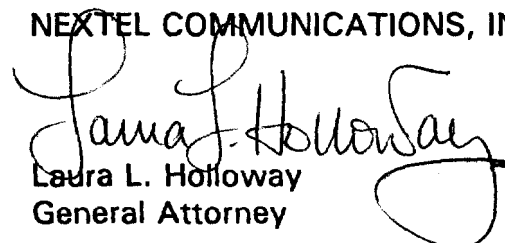
Dear Mr. Caton:

On behalf of Nextel Communications, Inc. and pursuant to Section 1.1206 of the Federal Communications Commission's Rules, this letter constitutes notice that Robert S. Foosaner, Steven Shindler and Lawrence R. Krevor met today with Jon C. Garcia, Director of Strategic Analysis, Office of Plans and Policy; and Michael Riordan, Chief Economist of the Commission, to discuss the above-referenced proceeding. Specifically, they discussed the need for the Commission to enforce its auction rules rather than relieving C Block licensees from their debt obligations. The attached documents were also left with Mr. Garcia and Mr. Riordan.

An original and one copy of this letter have been filed with the Secretary pursuant to Section 1.1206. Should any questions arise in connection with this notification, please do not hesitate to contact the undersigned.

Respectfully submitted,

NEXTEL COMMUNICATIONS, INC.

  
Laura L. Holloway  
General Attorney

cc: Mr. Jon C. Garcia  
Mr. Michael Riordan

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# WIRELESS WAVES

A weekly update of NATWEST's global Wireless Services & Wireless Equipment stocks

Jeffrey L. Hines (212) 602-5741

NATWEST SECURITIES

July 11, 1997

Volume 3, Issue 28

**MARKET RECAP: Market flat, but Telecom stocks remain generally strong w/ Equipment Index up 5.1% as Motorola reports solid 2Q. T-Bonds fall 9 bp. Can you believe that four of the indexes are challenging the market's YTD return of 24%?**

Telecom Index / Market	Close	Week Δ	Month Δ	LTM	YTD
S&P 500	917	0.0%	2.6%	42%	24%
Equipment (21)	122	5.1%	14.1%	25%	22%
Cable (12)	120	-0.6%	0.2%	15%	20%
Cellular (17)	119	1.1%	3.5%	8%	19%
CLBCs/Other (10)	118	4.6%	14.5%	25%	18%
Wireline (14)	111	-4.4%	-3.7%	19%	11%
PCS/Other (11)	102	1.9%	2.2%	-10%	2%
Paging (9)	87	3.2%	13.7%	-55%	-13%
30-year T-bond yield	6.53%	-9 bp	-19 bp	-48 bp	-9 bp

NatWest Telecom Index returns exclusive of dividends

## Motorola 2Q results point to better results

### across the board; Equipment Index surges 5.1%

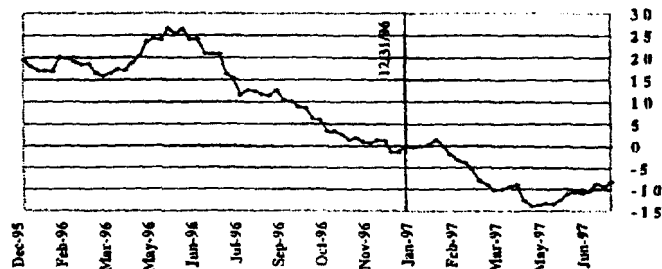
Motorola's (MOT-\$85-H) strong 2Q results drove the shares up almost 6% this week. Pre-charge EPS of \$0.62 were above our est. of \$0.57 & Street Consensus of \$0.56. Positive surprises included: revenues were better than expected in all 4 major reporting segments, w/ major pluses coming from Semiconductor & Messaging, Info. & Media; order input was strong and up for all 4 segments as well as Space & Systems Technology Group (read Iridium(IRIDF-\$19 1/4-NF)). Large cap. Wireless Equipment stocks are now trading at 32x, 27x, and 23x our 1997, 98 and 99 EPS estimates. This represents a 1.6x, 1.4x & 1.4x multiple relative to the S&P500. Historically (over the last 3 years), these stocks have traded in a range of 1.0-1.6x with the median being 1.3x. Using a 1.3x relative multiple on our FY98 estimates would suggest that both Motorola and Nokia (NOKA-\$79-A) may have upside potential from current prices.

## Taxpayers beware! Is the FCC ready to cave in to C-Block operators?

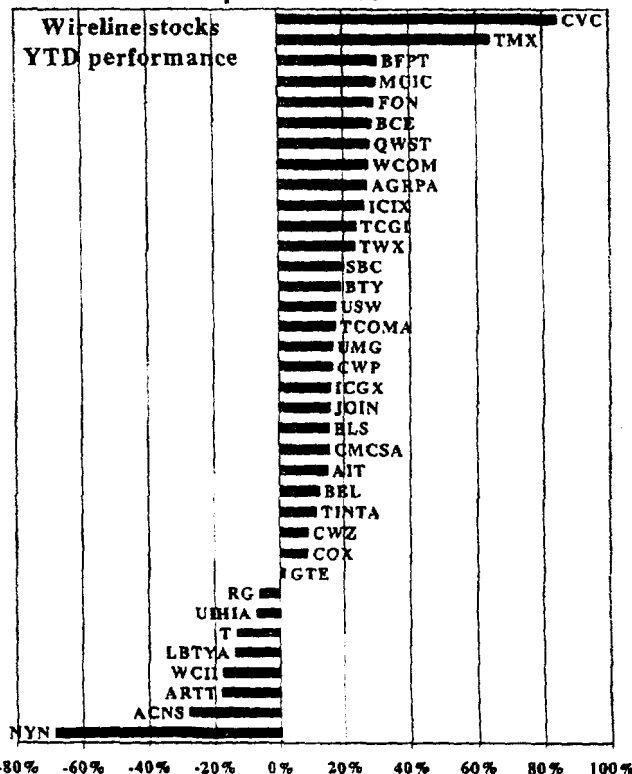
In what could become one of the more "remarkable" political events in FCC history, it appears that the FCC has started to bend on C-Block PCS auction rules. After bidders bid up prices, on average, to, at least in the current environment, "non-financeable" levels, it appears that the FCC is prepared to alter the rules. Current proposals would allow annual interest payments (as opposed to quarterly), thereby pushing out the first payment due date to 1998. While this change is certainly not what we would deem a significant change, it certainly seems less than fair to the bidders who dropped out of the auction believing that first payments would be due last March. If the FCC were really interested in bringing competition sooner, rather than later, we believe that it should have demanded payments back in March when the first installment was originally supposed to be due. Anyone who was unable to pay, would have been forced into default, with the licenses re-auctioned (the current delay is likely becoming untenable for both existing

high bidders and potential new bidders). We also believe that at least one of the commissioners is trying to significantly lower the payments that C-block operators would ultimately have to pay to the US Treasury Dept. (again, in our opinion, not exactly fair to those bidders who dropped out after bids continued to rise). This would be an interesting turn of events for an auction originally set to bring in small, entrepreneurial type of bidders. We note the largest bidder in the auction (NextWave) is backed by significant amounts of foreign capital and has issued warrants to MCI (MCIC-\$35-NF), who is being purchased by British Telecom (BTY-\$76 5/16-NF), to potentially purchase up a 25% equity interest in NextWave. Could be a nice relief to these foreign players. U.S. taxpayers beware!

## Barometer: Telecom stock performance vs. S&P500



## Wireline stocks: YTD performance



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\*The ADR and Ordinary share ratings may differ as they reflect the expected performance relative to the U.S. or local market/peer group, respectively.

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TOTAL P.01

62. Furthermore, the Industry Proposal provides no method for the Commission to recover a portion of the value of public spectrum pursuant to Section 309(j)(3)(C) of the Communications Act.<sup>140</sup> Instead, incumbent licensees who negotiate expansion rights among themselves could obtain a windfall by obtaining rights to an entire EA without having to pay for such expanded rights. We disagree with commenters who attempt to justify this potential windfall by arguing that the proposed settlement procedure complies with the directive in Section 309(j)(6)(E) for the Commission to avoid mutual exclusivity through "engineering solutions, negotiation, threshold qualifications, service regulations, and other means"<sup>141</sup> Section 309(j)(6)(E) requires us to adopt such methods where we find them to be "in the public interest."<sup>142</sup> We do not believe it is in the public interest to "resolve" the competing claims of incumbents and non-incumbents for spectrum by establishing a settlement mechanism that is limited to incumbents and excluding non-incumbents from the process.

63. The Industry Proposal would also be inconsistent with the approach we have adopted in other services where we have converted from site-by-site licensing to geographic area licensing. In our 900 MHz SMR proceeding and our recent paging proceeding, for example, we adopted similar rules for licensing on a geographic basis while protecting the existing operations of incumbent operators.<sup>143</sup> In neither instance did we give incumbents the unrestricted right to obtain available spectrum through a pre-auction settlement process that excluded non-incumbents. We also rejected this and similar alternatives for the upper 200 channels of the 800 MHz band.<sup>144</sup> For all of these reasons, we conclude that the Industry Proposal would not serve the public interest.

64. While we reject the specific settlement procedure described in the Industry Proposal, we note that many of the positive aspects of the proposal can still be accomplished through the auction process we are establishing for the lower 230 channels. For example, incumbents on these channels are free to enter into partnerships, joint ventures, or consortia for purposes of applying for EA licenses on the lower 230 channels in the areas where they currently operate. Incumbents may also negotiate transfers, swaps, partitioning arrangements, or similar agreements with respect to spectrum that is currently licensed to them. In some instances, taking these steps may result in only one entity applying for a given EA license. Where that occurs, no auction will be necessary because there will be no mutually exclusive applications to resolve. At the same time, providing all parties, incumbents and non-incumbents alike, with the *opportunity* to compete for EA licenses will ensure that the spectrum is awarded to the party that values it the most.

65. We also conclude that while geographic licensing is appropriate for the lower 230 channels, some additional flexibility is appropriate for incumbents on these channels to facilitate modifications and limited expansion of their systems. First, allowing incumbent licensees on the lower 230 channels such flexibility will facilitate the relocation of incumbent licensees on the upper 200 channels. Licensees who are faced with relocation will have a significant incentive to relocate rapidly and voluntarily if they know they will have greater flexibility to modify and expand their systems on the channels to which they are relocating. This will promote our objectives for enabling EA licensees on the upper 200 channels to make

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<sup>140</sup> 47 U.S.C. § 309(j)(3)(C).

<sup>141</sup> 47 U.S.C. § 309(j)(6)(E).

<sup>142</sup> *Id.*

<sup>143</sup> *See 900 MHz Second Report and Order; Paging Second Report and Order.*

<sup>144</sup> *See 800 MHz Report and Order*, 11 FCC Rcd at 1476-1480, ¶¶ 9-14.

86. Finally, APCO argues that we have recognized that public safety agencies need extended implementation because complex government funding mechanisms impede rapid deployment of public safety systems.<sup>150</sup> It argues that extended implementation should be available to public safety systems in the General Category. ITA argues that extended implementation should be available for all private radio licensees in the General Category, because problems such as budgetary constraints affect the I/LT and Business users as much as Public Safety licensees.<sup>151</sup>

87. Discussion. We reject Digital's claim that eliminating extended implementation interferes with legitimate business expectations.<sup>152</sup> First, these licensees have already been given significant time to complete construction. Second, upon adequate rejustification, licensees will have up to two years to complete build out of their systems. Far from being a "drastic change" that will strand investment, as Digital contends, this is an equitable transition to a more efficient method of providing service and using spectrum. Finally, Digital's reliance on the public interest analysis in the *OVS NPRM* is also misplaced. While, the *OVS* proceeding did acknowledge a strong public interest in establishing a level of certainty in business plans, we did not suggest that a licensees' business expectations were entitled to absolute protection, nor did we imply that these expectations would always dictate the course of future regulation.<sup>153</sup>

88. Digital's claim of a property interest in its license is also without merit. Both Section 301 of the Communications Act and relevant case law establish that licensees have no ownership interest in their FCC licenses.<sup>154</sup> Moreover, we do not agree that ending extended implementation will decrease competition. To the contrary, competitive bidding, which allocates resources to those who value them most, is a more efficient and competitive method than our prior rules for licensing spectrum on an extended basis. We also disagree that terminating extended implementation will limit small business participation. To the contrary, we have adopted special provisions, such as bidding credits, in order to assist small businesses at auction.<sup>155</sup>

89. Finally, in response to APCO, we note that we only curtailed extended implementation for SMR licensees.<sup>156</sup> Thus, non-SMR licensees with existing extended implementation grants are not

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<sup>150</sup> APCO Reply to Oppositions to Petitions at 8.

<sup>151</sup> ITA Opposition to Petitions at 4.

<sup>152</sup> Implementation of Section 303 of the Telecommunications Act of 1996 -- Open Video Systems, *Report and Order and Notice of Proposed Rulemaking*, FCC 96-99, at ¶ 25 (March 11, 1996) (hereinafter "OVS NPRM").

<sup>153</sup> *Id.*

<sup>154</sup> 47 U.S.C. § 301. *In re Beach Television Partners, Orix Credit Alliance, Inc. v. Mills*, 38 F3d 535, 536 (11th Cir. 1994)(citing *FCC v. Sanders Bros. Radio Station*, 309 U.S. 470 (1940)); see also *Orange Park Florida T.V. v. FCC*, 811 F2d 664, 674 fn.19 (D.C. Cir. 1987) # ("[A] licensee's interest in a broadcast license...is not a full-fledged, indefeasible property interest").

<sup>155</sup> *800 MHz: Report and Order*, 11 FCC Rcd at 1571-1575, ¶¶ 242-250.

<sup>156</sup> APCO Petition at 8.

## PCS licensee says keep auction rules

Dear Editor:

In 1993, I resigned from a corporate engineering position to become part of a start-up venture eager to participate in broadband PCS auctions. My wife remembers it well!

After the FCC postponed

the May 1994 auction process indefinitely, our company size and investor interest dwindled. Once the A- and B-block auctions got underway with the promise of the C-block auction to immediately follow, we once again found new interest from investors. But the litigation started and the C-block auction was delayed and delayed. Even so, we survived on consulting revenues and venture capital investments. As late 1995 approached, our company was cautiously optimistic as we finalized a relationship with a large investor who facilitated a down payment of \$20 million.

As the auction began, we felt elated that what had been only a dream two years earlier was now coming to fruition. This dream died in round 42 of the C-block auction when our company withdrew due to what we, as well as our investors, believed were outrageously high prices for the licenses being offered. Given what everyone had been through to get to this point in the process, this was a very emotional decision. But, we felt it was the correct one from a business point of view though questions remained. When would other auctions be held? Would our large investors wait for these opportunities? Why was there such a discrepancy in how we valued licenses in our business plans vs. how other bidders, who were continuing to bid, valued them? How would the FCC deal with defaulting bidders?

At the end of the auction process, many of the experienced people who made up our company moved on to other ventures and with them the hopes, dreams and opportunities that appeared so achievable at the start of the auction process came to an end. With our large investor departed, I and a few others remained with the hope that default and the D-, E- and F-block auctions would follow quickly. Both did. Our company bid in the C-block auction with the same results as in the previous auction. As the D-, E- and F-block auctions approached, investors became difficult to find due to the questions surrounding the prices paid for C-block licenses.

With the sole support of our venture capital group, we entered the last PCS

broadband auction. Our company was a successful high bidder for four F-block licenses that we believed were good markets at a fair price. We felt somewhat vindicated. We had made a wise business decision to leave the C-block auction and had persevered to win licenses in the F-block. The difference in our F-block license costs and the C-block licenses in our markets was substantial. Investors and vendors alike gave favorable approval to our business plans.

At this point, my story takes what is to me an unbelievable turn. Many of the C-block high bidders are now looking to the FCC for debt restructuring and/or cancellation because the prices they paid for their C-block licenses are preventing them from being financed. Many complain of "market melt down." I believe that the prices paid in the C-block auction actually propagated a depressed market for telecom stocks. Maybe a self-fulfilling prophecy? At the FCC forum on C-block debt restructuring, some top financial people said C-block license winners were fundable at some point during the auction process. Though now, only 14 months later, these same financial investors are stating that the license debt needs to be written down to the tune of 75 to 80 percent. What a drastic change in outlooks! I suspect many of these business plans were never fundable in the first place given the prices paid for the licenses.

It appears though that the FCC is open to some form of debt restructuring even after stating more than once: "We do not want to interfere in the market place." "We guarantee opportunity, not success." "We will go after licensees who default on their auction payments, cancel their licenses and re-auction the affected spectrum." The point I was missing at the FCC forum was the fact I believed that my company made a wise business decision to leave the C-block auction and wait for future opportunities, but if the FCC makes significant changes to the license payments, they will be sending my company a different message. I also hear the financial community stating how important a good management team is to its investment decision, but what

I heard stated at the FCC forum is the fact that with a significant license debt restructuring, these financial investors would be willing to invest in these same companies whose management placed what appear to now be "fatal" bids.

To me, the integrity of the auction process is greatly at stake. I always viewed the FCC as having rules, not guidelines when they formulated their orders for these auctions. Any changes at this late date to the C-block rules would send a message to the industry that the FCC can be had for the right price! The license prices (values) were established by the market when the respective auctions were held. If the FCC intervenes on behalf of the C-block licensees and re-establishes a market value (price) for these licenses, what effect will that have on other broadband PCS licenses and company values? Justice and fairness are hard words to define in our world today, but it seems to me that what the FCC is contemplating is neither. What fairness is there for my company along with approximately 170 others if significant reductions are made to the debt of current C-block licensees? What justice is there in the fact my company, which waited and won F-block licenses, will look significantly different to investors if the C-block licenses debt is restructured?

I am not looking for sympathy because I know there are hundreds of stories similar to mine. What I would

like to accomplish with this letter is simply to have all sides of the issue known. Not just the incessant crying of overzealous bidders who have, and continue to make a mockery of the FCC and the PCS industry.

David C. Roberts  
AirGate Wireless

## Nortel to establish Brazil operations

SAO PAULO, Brazil—Following BellSouth Corp.'s announcement that it has chosen Northern Telecom Inc. to provide infrastructure for its network in Sao Paulo, Brazil, Nortel said it will establish manufacturing operations in Brazil to respond to the enormous growth of the wireless market.

The company said it will manufacture digital wireless telecommunications systems in Campinas, Sao Paulo State, with Promon Electronics, Brazil's leading engineering firm, beginning in the fourth quarter.

Nortel's initial investment will total more than \$25 million in manufacturing and \$100 million in associated operations, including training and research and development.

The company said it plans to manufacture Time Division Multiple Access and Code Division Multiple Access wireless radio base station equipment. The two technologies are making strong inroads in Latin America.

## AD INDEX

Company	Page	Fax/Email/Web
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Racal Instruments, Inc.	8	http://www.qualcomm.com fax:714-859-7139
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